

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff Jefferson  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) 409.835.6000  
Darren Brown, Provost Umphrey Law Firm  
490 Park St. Beaumont TX 77704

**DEFENDANTS**

County of Residence of First Listed Defendant Fulton (Georgia)  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) Brian Coolidge 713.868.5560  
Lorance & Thompson P.C. 2900 N. Loop W.  
Suite 500, Houston TX 77095

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |                                         |                                           |                                       |                                                               |                                |                                       |
|-----------------------------------------|-------------------------------------------|---------------------------------------|---------------------------------------------------------------|--------------------------------|---------------------------------------|
| Citizen of This State                   | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1        | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4        |
| Citizen of Another State                | <input type="checkbox"/> 2                | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5     | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3                | <input type="checkbox"/> 3            | Foreign Nation                                                | <input type="checkbox"/> 6     | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY - Med. Malpractice</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

- (Place an "X" in One Box Only)
- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Motorcycle crash on Fannett Rd in Beaumont

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Donald Floyd

DOCKET NUMBER E181164

DATE

7.10.08

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION**

**JIMMY A. SMITH**

**VS.**

**MILOSLAV VILARET,  
COMPASS EXPRESS, INC. and  
ENTERGY GULF STATES**

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**C.A. NO. 1:08-CV-00381**

**JURY TRIAL REQUESTED**

**NOTICE OF REMOVAL**

Defendants, Miloslav Vilaret and Compass Express, Inc., hereby give notice of the removal of cause No. E181164 filed in the 172nd Judicial District Court of Jefferson County, Texas, to the United States District Court for the Eastern District of Texas pursuant to the provisions of 28 U.S.C. §§ 1441(a) and 1446.

**FACTUAL BACKGROUND**

1. This suit is the result of a motorcycle crash that occurred on or about October 30, 2006, near the intersection of Fannett Road (Highway 124) and Parkview Drive in Beaumont, Jefferson County, Texas.

2. Miloslav Vilaret was driving an 18 wheeler for Compass Express, Inc. He did not feel well and turned off of Fannett into a carwash and stopped his truck for a few minutes. The trailer attached to the truck extended out of the carwash parking lot and onto the shoulder of Fannett.

3. Jimmy Smith was driving a Harley Davidson motorcycle northeast on Fannett. Smith had a passenger, Tonjia Chandler, riding along.

4. Smith was following a car driven by an unknown third party. The driver of the car stopped on Fannett near Vilaret's trailer. The car did not collide with the trailer.

5. Smith failed to come to a safe stop behind the car. Instead, Smith laid his bike on its side and slid into the ditch without colliding into another vehicle. Smith and Chandler were transported to the hospital.

6. Smith brought a personal injury suit against Vilaret and Compass Express in Texas state court on February 1, 2008. (Ex. A.) Additionally, Smith brought a claim against Entergy Gulf States<sup>1</sup> for failure to provide, install, inspect and maintain street lights in the area of the crash. (Ex. A.)

7. Vilaret is a resident of Georgia. Compass Express maintained its principle offices in Illinois and is incorporated in Illinois. Vilaret and Compass Express answered the state court petition on March 14, 2008. (Ex. B.)

8. Entergy its offices in Beaumont, Jefferson County, Texas. Entergy answered the state court petition on February 29, 2008. (Ex. C.)

#### **FRAUDULENT JOINDER**

9. Vilaret and Compass Express would show the Court that Plaintiff has no possibility of obtaining judgment against Entergy. Accordingly, Entergy is fraudulently joined, and its status as a defendant in this case will not defeat diversity jurisdiction.

10. "Joinder of a non-diverse defendant is deemed fraudulent, and the defendant's presence in the lawsuit is ignored for purposes of determining diversity, 'if the

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<sup>1</sup> Entergy Texas, Inc. is the successor in interest to Entergy Gulf States operating in the Beaumont area as of January 1, 2008. Entergy Texas, Inc. answered and has made an appearance on behalf of Entergy Gulf States in this lawsuit.

plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state.’” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (concluding no cause of action could succeed against the non-diverse defendant under Texas law and removal based on diversity was proper); *see also Bain v. Honeywell Int’l Inc.*, 167 F. Supp. 2d 932, 936–937 (E.D. Tex. 2001) (fraudulent joinder established where claim against non-diverse defendant was barred as a matter of law).

11. “Merely *pleading* a valid state law claim, or one whose validity is reasonably arguable, against the resident defendant does not mean that the joinder of the resident defendant is not fraudulent. . . .” *Hornbuckle v. State Farm Lloyds*, 385 F.3d 538, 542 (5th Cir. Tex. 2004) (emphasis in original). The district court should “pierce the pleadings to determine whether, under controlling state law, the non-removing party has a valid claim against the non-diverse parties.” *LeJeune v. Shell Oil Co.*, 950 F.2d 267, 271 (5th Cir. 1992).

12. The Fifth Circuit endorses a summary judgment-like procedure for disposing of fraudulent joinder claims. *See B., Inc. v. Miller Brewing Co.*, 663 F.2d 545 (5th Cir. 1981). Accordingly, district courts may consider outside evidence to determine a plaintiff has no possibility of obtaining a judgment against a party. *Id.* at 549. “In short, this circuit treats fraudulent joinder claims as capable of summary determination.” *Carriere v. Sears, Roebuck & Co.*, 893 F.2d 98, 100 (5th Cir. 1990).

13. Plaintiff claims Entergy failed to install, provide, inspect and maintain street lights in the area of the accident. (Ex. A at 3.) Plaintiff’s theories of liability in this case against Entergy, “each and all amount[ ] to negligence.” (Ex. A at 3.) Thus, Plaintiff must show Entergy had and breached a duty owed to Plaintiff.

14. The existence of a legal duty is a question of law for the court to decide from the surrounding facts. *Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d 523, 525 (Tex. 1990). If a defendant owed no duty, it cannot be found liable for negligence. *Whitmire v. Terex Telelect, Inc.*, 390 F. Supp. 2d 540, 557 (E.D. Tex. 2005). The factors to be considered in determining whether a legal duty exists include the likelihood of injury weighed against the social utility of the actor's conduct, the magnitude of the burden of guarding against the injury, the consequences of placing the burden on the defendant, and whether a right to control exists concerning the actor whose conduct precipitated the alleged harm. *Graff v. Beard*, 858 S.W.2d 918, 920 (Tex. 1993).

15. Under Texas law, "[t]he right of control is an important factor in determining the existence of a legal duty, and it is often the deciding factor." *Davis v. Dallas County*, 541 F. Supp. 2d 844, 851 (N.D. Tex. 2008); citing *Loyd v. ECO Resources*, 956 S.W.2d 110, 129 (Tex. App. Houston 14th Dist. 1997, no writ) (finding a defendant contracted by a M.U.D. to operate and maintain its water works owed no duty to homeowners in a class claim regarding corrosive water because the contractor did "not have authority to decide how to treat the water").

16. The affidavit of Harry "Clay" Sport is attached to this notice of removal as Exhibit D and is fully incorporated herein by reference in support of the contention that Entergy has been fraudulently joined. The affidavit establishes Entergy did not have control or authority to install, maintain, inspect or provide street lights as alleged by Plaintiff:

- Entergy did not have authority to install street lights on Fannett Road without a written request from the State of Texas. (Ex. D.)

- Entergy had no pending requests authorizing it to install street lighting along Fannett on the date of the accident. (Ex. D.)
- Entergy had no notice or complaint that the street light nearest the location of the accident was inoperative, and based on the lack of repair tickets or complaints given to Entergy, the light was working at the time of the accident. (Ex. D.)

17. The evidence demonstrates Entergy did not owe a duty to Plaintiff as a matter of law. Moreover, the evidence establishes that Entergy did not breach a duty to install, maintain, inspect or provide lighting in the area of the accident.

18. Plaintiff cannot recover against Entergy. Thus, Entergy is a fraudulently joined defendant.

#### **BASIS FOR REMOVAL BASED ON DIVERSITY JURISDICTION**

19. This cause may be removed pursuant to 28 U.S.C. § 1441(a). “[A]ny civil action brought in State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . , to the district court of the United States for the district and division embracing the place where such action is pending.” This Court has jurisdiction over this matter under 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy is greater than \$75,000.

#### ***Diversity of Citizenship***

21. Absent the fraudulent joinder of Entergy, there is complete diversity of citizenship between the parties. 28 U.S.C. § 1332(a).

22. Plaintiff is an individual residing in Port Arthur, Texas.

23. Compass Express, Inc., Defendant, is an Illinois corporation which maintained its principal place of business just outside of Chicago, Illinois.

24. Miloslav Vilaret is an individual residing in Atlanta, Georgia.

***Amount in Controversy***

25. In order for diversity jurisdiction to exist, the amount in controversy must exceed \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a).

26. Plaintiff is claiming in excess of \$75,000 in damages.

***Timely Filed***

27. If a suit is not removable at the time of filing but later becomes removable, “a notice of removal may be filed within thirty days after receipt . . . of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b); *Beasley v. Goodyear Tire & Rubber Co.*, 835 F.Supp. 269, 273 (observing that a defendant has 30 days to petition for removal from the time it learns plaintiff has no possibility of recovering against a codefendant that defeats diversity).

28. This removal is timely filed within thirty days of the date Defendants received the affidavit of Mr. Sport. (Ex. D.) The affidavit is the instrument from which Defendants were first able to ascertain that plaintiff has no possibility of obtaining a judgment against Entergy and determine it is a fraudulently joined defendant.

**JURY DEMANDED**

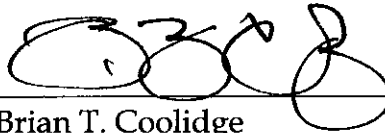
29. A jury demand was made in state court. Defendant requests that the case be tried before a jury.



**COMPLIANCE WITH NOTICE REQUIREMENTS**

30. Pursuant to 28 U.S.C. 1446(d), written notice of the filing of this instrument has been contemporaneously given to the Plaintiff. A true and correct copy of this Notice of Removal has been contemporaneously attached as an exhibit with the written notice of removal filed with the clerk of the state court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BTC', is written over a horizontal line.

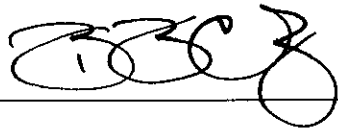
Brian T. Coolidge  
Texas State Bar #24004595

OF COUNSEL:

**LORANCE & THOMPSON, P.C.**  
2900 North Loop West, Suite 500  
Houston, Texas 77092  
(713) 868-5560  
(713) 864-4671 (Facsimile)  
**Attorney for Defendants**  
**Compass Express, Inc. &**  
**Miloslav Vilaret**

**CERTIFICATE OF SERVICE**

I certify that on the July 10, 2008, a true and correct copy of the foregoing instrument was mailed, postage prepaid, to all counsel of record.



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A handwritten signature in black ink, consisting of several loops and a final vertical stroke, is positioned above a horizontal line.

**INDEX OF ALL MATTERS BEING FILED**

In compliance with 28 U.S.C. § 1446 and Local Rule 81, the following documents are attached to this Notice:

- Exhibit A.....Plaintiff's Original Petition filed in Jefferson County, Texas District Court;
- Exhibit B .....Defendants, Miloslav Vilaret and Compass Express, Inc.'s Original Answer filed in Jefferson County, Texas District Court;
- Exhibit C.....Defendant, Entergy Texas, Inc.'s First Amended Answer to Plaintiff's Original Petition filed in Jefferson County, Texas District Court;
- Exhibit D.....Affidavit of Harry "Clay" Sport;
- Exhibit E .....List of all counsel of record, including addresses, telephone numbers and parties represented;
- Exhibit F.....Status of Removed Case; and
- Exhibit G .....Name and address of the court from which case is being removed.

E 181164

NO. \_\_\_\_\_

JIMMY A. SMITH

vs.

MILOSLAV VILARET, COMPASS  
EXPRESS, INC., and ENTERGY GULF  
STATES

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IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

172<sup>nd</sup> JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW JIMMY A. SMITH, hereinafter referred to as "Plaintiff" in the above styled and numbered cause, complaining of MILOSLAV VILARET, COMPASS EXPRESS, INC. and ENTERGY GULF STATES, hereinafter referred to as "Defendants" and for cause of action would show unto the Court as follows:

1.

Discovery in this case is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

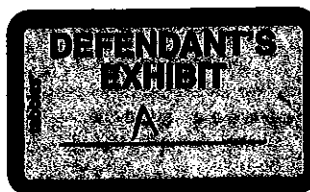
2.

Plaintiff, JIMMY A. SMITH, resides at 708 N. 11<sup>th</sup> Street, Nederland, Jefferson County, Texas 77627.

3.

Defendant, MILOSLAV VILARET, is an individual residing at 1322 Briarwood Road, #C7, Atlanta, Georgia 30319. Mr. Villaret may be served with process pursuant to Texas Civil Practice and Remedies Code §17.062 by serving Ric Williamson, Chairman of the Texas Transportation Commission, 125 East 11<sup>th</sup> Street, Austin, Texas 78701

Defendant, COMPASS EXPRESS, INC. is an Illinois company, located in 5602 S. Park Road, Countryside, Illinois, doing business in the state of Texas and operating upon Texas



roadways at the time of the occurrence. Said company may be served with process pursuant to Texas Civil Practice and Remedies Code §17.062 by serving Ric Williamson, Chairman of the Texas Transportation Commission, 125 East 11<sup>th</sup> Street, Austin, Texas 78701.

Defendant, ENTERGY GULF STATES, is a Texas company, located at 5495 Fannett Road, Beaumont, Texas 77705. Said company may be served with process pursuant to Texas Civil Practice and Remedies Code §17.062 by serving Paul A. Scheurich, 350 Pine Street, Beaumont, Texas 77701.

4.

Plaintiff, JIMMY A. SMITH would show that on or about October 30, 2006 at approximately 8:00 p.m., he was driving his motorcycle north along Hwy. 124. Defendant, MILOSLAV VILARET, had stopped his tractor-trailer blocking Plaintiff's lane of traffic, while attempting to turn his rig around. Said accident was caused by one or more negligent acts and/or omissions on the part of the Defendants, such acts being the proximate cause of personal injuries to Plaintiff, Jimmy A. Smith.

5.

The tractor-trailer was owned by Defendant, Compass Express, Inc., and was being driven by Defendant, Miloslav Vilaret. Plaintiff would show that Defendant, Compass Express, Inc. is directly liable to Plaintiff for its own negligence. In particular, such direct liability herein is predicated upon the legal theory of negligent entrustment, negligent hiring and negligent retention of an unqualified and/or unsafe driver. At all times material hereto, Defendant, Miloslav Vilaret was acting in the course and scope of his employment with Defendant, Compass Express, Inc. Such being the case, Defendant, Compass Express, Inc. is vicariously liable to Plaintiff for all such acts and omissions of negligence on the part of Miloslav Vilaret under the theory of respondent superior.

Each of these acts or omissions, singularly or in combination with others, constituted negligence, which proximately caused the occurrence made the basis of this action and Plaintiff's

6.

On the occasion in question, Defendants, Miloslav Vilaret and Compass Express, Inc., were guilty of certain acts, wrongs, and/or omissions, each and all amounting to negligence. Said acts, wrongs, and/or omissions include, without limitation, the following:

- a. Failure to keep proper lookout as a person of ordinary prudence would have done under the same or similar circumstances;
- b. Failure to keep the tractor-truck and trailer rig under proper control;
- c. Failure to yield right-of-way;
- d. Making an improper turn;
- e. Failing to maintain equipment in proper working condition;
- f. Failing to properly signal;
- g. Operating a commercial tractor-trailer without proper qualifications and/or while being a disqualified driver;
- h. Operating a commercial tractor-trailer without proper training and/or ability to do so;
- i. Illegally blocking a lane of traffic of a state highway
- j. Operating a commercial tractor-trailer without proper lighting; and
- k. In committing various acts and/or omissions of negligence, both statutory and common law, to be specified in detail at the time of trial.

Further, on the occasion in question, Defendant, Entergy Gulf States was guilty of certain acts, wrongs, and/or omissions, each and all amounting to negligence. Said acts, wrongs and/or omissions include, without limitation, the following:

- a. Failure to properly install, inspect and maintain the street lights in the area of the accident.
- b. Failure to provide adequate lighting in the area of the accident; and
- c. In committing various other acts and/or omissions constituting negligence, both statutory and common law, to be specified in detail at the time of trial.

10.

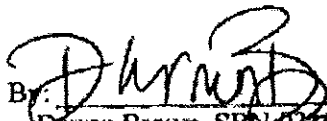
Plaintiff also asserts a claim for prejudgment interest for all elements of damages that such interest is allowed for.

11.

WHEREFORE, Premises Considered, Plaintiff prays that the Defendants be cited to appear and answer herein as the law directs, and that upon final hearing, Plaintiff have and recover judgment of and from the Defendants pursuant to the above and foregoing allegations in such amounts as the evidence may show proper at the time of trial; together with interest thereon at the legal rate, costs of Court, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

**PROVOST ★ UMPHREY LAW FIRM**  
490 Park Street  
P. O. Box 4905  
Beaumont, Texas 77704  
(409) 835-6000  
(409) 838-8888 (FAX)

By:   
Darren Brown, SBN 03408350  
ATTORNEYS FOR PLAINTIFFS

**JURY DEMAND**

Plaintiffs respectfully request a trial by jury.

  
Darren Brown

NO. E181164

JIMMY A. SMITH

§

IN THE DISTRICT COURT OF

§

vs.

§

§

JEFFERSON COUNTY, TEXAS

MILOSLAV VILARET,

§

COMPASS EXPRESS, INC. and

§

ENTERGY GULF STATES

§

172nd JUDICIAL DISTRICT

**DEFENDANTS' ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Miloslav Vilaret and Compass Express, Inc. and file this Answer to the petition filed by Plaintiff, and would respectfully show unto this Honorable Court as follows:

**I. GENERAL DENIAL**

1. As provided by Rule 92 of the Texas Rules of Civil Procedure, Defendants enter a general denial of the matters pleaded by Plaintiff's Original Petition, and ask that these matters be properly decided by this Honorable Court and Jury.

**II. AFFIRMATIVE DEFENSES**

2. Answering specifically, Defendants would show the Court and Jury that the accident was caused by the actions of parties or instrumentalities that Defendants had no control over, and said failure was the sole cause and/or proximate cause of the accident that is the basis of this suit.

3. Pleading further, or in the alternative, Defendants would show the occurrence and injuries alleged by Plaintiff are the result of a new and independent





cause made possible by a separate and independent agency. Any causal connection to an alleged act or omission of Defendants is destroyed by the new and independent cause.

4. Pleading further, or in the alternative, Defendants would show the occurrence and injuries alleged by Plaintiff are the result of a new and independent cause made possible by a separate and independent agency. Any causal connection to an alleged act or omission of Defendants is destroyed by the new and independent cause.

5. Pleading further, or in the alternative, Defendants would show the Court and Jury that the accident was caused by Plaintiff's failure to exercise that degree of care which persons of ordinary prudence under the same or similar circumstances would have exercised, and as such, said failure was the sole cause and/or proximate cause of the accident that is the basis of this suit.

6. Defendants request that the Court submit questions and ask the Jury to assess the proportionate responsibility of Plaintiff, pursuant to Texas Civil Practice & Remedies Code 33.001 *et. seq.*

7. Pleading further, or in the alternative, Defendants state that Plaintiff committed acts and/or omissions of negligence, both statutory and common law to be specified at trial.

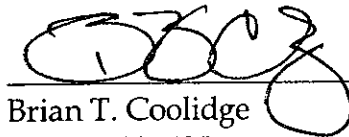
### III. JURY REQUESTED

8. Defendants assert their right to a trial by jury under the Texas Constitution, Article I, §15, and timely make this demand for a jury trial in accordance with Texas Rules of Civil Procedure 216. The jury fee has been paid.

WHEREFORE, PREMISES CONSIDERED, Defendants, Miloslav Vilaret and Compass Express, Inc. pray that Plaintiff take nothing by this suit, and for such other and further relief, both general and special, at law and in equity, to which Defendants may be justly entitled.

Respectfully submitted,

LORANCE & THOMPSON, P.C.



Brian T. Coolidge

SBN: 24004595

2900 North Loop West, Suite 500

Houston, Texas 77092

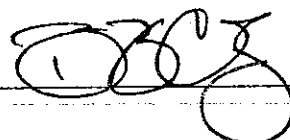
(713) 868-5560

(713) 864-4671 Fax

**ATTORNEY FOR DEFENDANTS,  
COMPASS EXPRESS, INC. and  
MILOSLAV VILARET**

### CERTIFICATE OF SERVICE

On this 14<sup>th</sup> day of March, 2008, a true and correct copy of the foregoing instrument has been provided to all parties by United States mail, courier service, or telefax transmission.



CAUSE NO. E-181,164

JIMMY A. SMITH	§	IN THE DISTRICT COURT OF
	§	
VS.	§	
	§	JEFFERSON COUNTY, TEXAS
MILOSLAV VILARET, COMPASS	§	
EXPRESS, INC. and ENTERGY GULF	§	
STATES	§	172 <sup>ND</sup> JUDICIAL DISTRICT

DEFENDANT ENTERGY TEXAS, INC.'S FIRST AMENDED  
ANSWER TO PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Entergy Texas, Inc., successor in interest to Entergy Gulf States, Inc., hereinafter called Defendant, and respectfully makes its First Amended Answer to Plaintiff's Original Petition, and respectfully pleads as follows:

I.

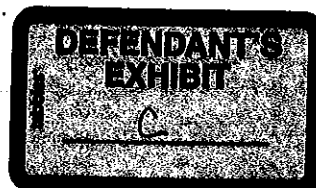
Defendant asserts a general denial as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and Defendant requests that Plaintiff be required to prove the charges and allegations against Defendant by a preponderance of the evidence as is required by the Constitution and law of the State of Texas.

II.

Defendant says that at the time and on the occasion in question, Plaintiff was guilty of contributory negligence, and such negligence was the sole proximate cause or in the alternative, a proximate cause of the incident in question.

III.

Defendant says that at the time and on the occasion in question that some other party or event over which this Defendant had no control was the sole proximate cause or, alternatively, a proximate cause of the incident in question.



IV.

In the event that Defendant is held liable to Plaintiff, any such liability being expressly denied by Defendant, then Defendant is entitled to a reduction for the negligence, liability or other conduct alleged which is attributable to any other party to this lawsuit or settling person, in accordance with Chapter 33 of the Texas Civil Practice and Remedies Code.

V.

Defendant invokes the limitations set forth in §41.0105 of the Texas Rules of Civil Practice and Remedies Code wherein recovery of medical or health care expenses is limited to the amount actually paid or incurred by or on behalf of the claimant.

VI.

Defendant asserts as an affirmative defense that it owed no duty to Plaintiff.

VII.

Defendant respectfully reserves the right to amend this Answer to Plaintiff's allegations as is its rights and privilege under the Texas Rules of Civil Procedure and the laws of the State of Texas.

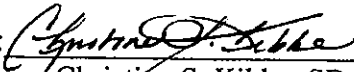
VIII.

Defendant respectfully requests a jury trial pursuant to Rule 216 of the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff recover nothing, Defendant recover its costs and for general and special relief.

Respectfully submitted,

ENTERGY TEXAS, INC.

By:   
Christine S. Kibbe, SB #00791666  
Paul A. Scheurich, SB #17745470  
Its Attorneys  
P. O. Box 2951  
Beaumont, Texas 77704-2951  
(409) 981-3000  
Fax (409) 981-3016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel of record pursuant to the *Texas Rules of Civil Procedure* on this the 24<sup>th</sup> day of June, 2008.

  
Christine S. Kibbe

STATE OF TEXAS

§

JEFFERSON COUNTY

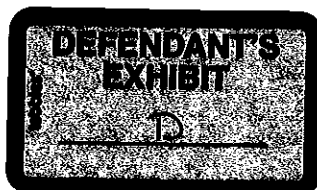
§

§

AFFIDAVIT OF HARRY "CLAY" SPORT

The undersigned, Harry "Clay" Sport, being first duly sworn on oath, states as follows:

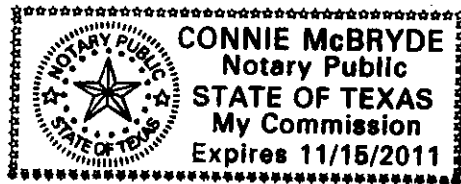
1. My name is Harry "Clay" Sport. I am over the age of twenty-one years and of sound mind. I am competent to make this Affidavit. I have personal knowledge of the statements made herein and that the facts are true and correct.
2. I am currently employed by Entergy Texas, Inc. My business address is 60 North 11<sup>th</sup> Street, Beaumont, Texas, 77702.
3. I am currently the Texas Street Light Coordinator. In this position, my primary responsibility is for the inventory of and the billing of all Entergy Texas, Inc. owned street lights.
4. As part of my job, I have personal knowledge of the street lights owned and maintained by Entergy Texas, Inc. in Jefferson County. I also have personal knowledge of 5400 Fannett Road.
5. Entergy Texas, Inc. did not and does not have authority to install street lights along Fannett Road (also known as FM 124) without written request from the State of Texas. Entergy Texas, Inc. had no pending requests authorizing it to install street lighting along Fannett Road as of October 30, 2006.
6. The street light owned and maintained by Entergy Texas, Inc. closest to 5400 Fannett is a street light located on Parkview at its intersection of Parkview and Fannett Road. Per the City of Beaumont's instructions, this light was installed to illuminate Parkview, which is a City-owned street, and not Fannett Road, which is owned by the State.



7. Entergy Texas, Inc. did not have any notice or any complaint that the street light located on Parkview at Fannett was out or not working properly on or about October 30, 2006. Based upon the lack of any repair tickets or any complaints, the street light located on Parkview at Fannett was working properly on October 30, 2006.

Harry Clay Sport  
Harry "Clay" Sport

SUBSCRIBED AND SWORN TO before me on this 25th day of June, 2008.



Connie McBryde  
Notary Public in and for the  
State of Texas

**LIST OF PARTIES, COUNSEL OF RECORD AND STATUS OF REMOVED CASE**

**PARTIES:**

**Plaintiff:** Jimmy A. Smith

**Defendants:** Miloslav Vilaret, Compass Express, Inc. and Entergy Gulf States

**ATTORNEYS:**

**Attorney for Plaintiff, Jimmy A. Smith:**

Darren Brown  
Texas Bar No. 03108350  
Provost Umphrey Law Firm  
490 Park St.  
P.O. Box 4905  
Beaumont, TX 77704  
409.835.6000  
409.838.8888 fax

**Attorney for Defendants, Miloslav Vilaret and Compass Express, Inc.:**

Brian T. Coolidge  
Texas Bar No. 24004595  
Lorance & Thompson, PC  
2900 North Loop West, Suite 500  
Houston, TX 77092  
713.868.5560  
713.864.4671 fax

**Attorney for Defendant, Entergy Gulf States**

Christine Kibbe  
State Bar No. 00791666  
Entergy  
350 Pine St.  
Beaumont, TX 77701  
409.981.3000  
409.981.3016 fax





**STATUS OF REMOVED CASE:**

February 1, 2008 .....Plaintiff's Original Petition filed  
February 14, 2008 .....Petition and Citation served on Entergy Gulf States  
February 21, 2008 .....Petitions and Citations served on Miloslav Vilaret and  
Compass Express, Inc.  
February 29, 2008 .....Defendant, Entergy Gulf States' state court Answer filed  
March 17, 2008 .....Defendants, Miloslav Vilaret and Compass Express, Inc.'s  
state court Answer filed  
June 25, 2008 .....Affidavit of Harry "Clay" Sport signed  
July 10, 2008 .....Notice of Removal filed

Plaintiff has responded to Defendant's Interrogatories, Request for Production and Request for Disclosure. Defendants, Miloslav Vilaret and Compass Express, Inc. have responded to Plaintiff's Interrogatories, Request for Production, and Request for Admissions. Defendant, Entergy Gulf States has responded to Plaintiff's Request for Disclosure. There have been no settlement discussions. The matter has not been mediated. A Docket Control Order has not been issued by the state court judge. The case is not set for trial.



**NAME AND ADDRESS OF THE COURT  
FROM WHICH CASE IS BEING REMOVED**

172nd District Court  
Jefferson County Courthouse  
1001 Pearl Street  
Beaumont, Texas 77701

